

COVID-19 FAQs (Updated 5/28/20)

Governor Whitmer has declared real estate activities and construction activities to be permissible resumed activities effective May 7, 2020. Attached are questions that we have received over the last few days about the Governor's latest order. Going forward, we will certainly update/supplement these FAQs as we hear from members and/or receive additional information.

1. QUESTION: Can I conduct in-person listing appointments and showings?

ANSWER: Yes. The Governor has declared that workers in the real estate industry (including brokers and agents) may resume activity as of May 7, 2020. The Executive Order expressly authorizes potential buyers to leave their homes in order to view a real estate listing by appointment.

2. QUESTION: What requirements must be followed at any listing appointment or showing?

ANSWER: The Governor's Order 2020-96 requires:

 - (i) All real estate activity conducted at a property must be by appointment;
 - (ii) No more than four people may be in attendance; and
 - (iii) All persons must maintain a six-foot social distance at all times.

3. QUESTION: Now that real estate services are a "resumed service," is there any reason to use the Addendum to Purchase Agreement form?

ANSWER: The Addendum to Purchase Agreement form gives each party the right to a 30-day extension of a deadline in the event of a COVID created impossibility. This would still be useful if, for example, either party was under quarantine or conditions worsened such that the Governor temporarily suspended real estate services as a "resumed service."

4. QUESTION: Must everyone wear a mask during a listing appointment or showing?

ANSWER: The Governor's Order requires that masks be worn in "enclosed public spaces," which presumably would not include a private residence.

That being said, the Governor's Order does state that those businesses conducting in-person activities must "adopt mitigating measures to protect patrons." While it is up to individual brokerages to adopt their own mitigation measures to comply with the order, the wearing of masks while visiting someone else's home appears to be sound practice. Sellers can require masks as a condition of permitting a showing.

5. QUESTION: Can I show residential rental properties to potential tenants?

ANSWER: Yes, unless the residential rental property is currently occupied. Landlords/property managers may not arrange in-person showings of a residential rental property until after the current tenant has permanently vacated the unit. A residential rental unit may not be shown while the tenant is temporarily out of town. Commercial properties offered for lease may be shown even if they are occupied (subject to the current tenant's rights under the existing lease).

6. QUESTION: Can I show a multifamily building that I have listed for sale if it is occupied by tenants? Isn't this a "commercial" property?

ANSWER: You may not show individual residential units that are currently occupied by tenants. While a multifamily building is "commercial" for tax purposes, it is not "commercial" in the context of land use. Governor's Order 2020-77 prohibits a showing of a residential property unless the residential property is either owner occupied or vacant. The purpose of such a requirement is to make sure that residential tenants are not required to allow strangers into their homes.

7. QUESTION: Can I show a home that I have listed for sale if there is an existing tenant in that home?

ANSWER: No. The Governor's Order only permits private showings of any owner occupied or vacant residential property.

8. QUESTION: My seller is offering for sale a three-bedroom home that he currently leases to a family member. Can I arrange showings of the home if the tenant consents?

ANSWER: The Governor's Order expressly authorizes showings of owner-occupied homes and does not answer the question as to whether and under what circumstances a tenant can authorize a showing. Sellers and their Realtors® should discuss the specifics of their situation with counsel prior to relying on any tenant authorization.

9. QUESTION: Does a rental unit need to be vacant before I can schedule an inspection or an appraisal?

ANSWER: No. The Executive Order's requirement that the tenants have vacated the property only applies to private showings. However, if the current lease does not give the owner/landlord access for this purpose, then you must get the tenant's consent.

10. QUESTION: Is a seller required to allow in-person showings?

ANSWER: No. A seller has the right to elect not to permit an in-person showing or to set conditions on such showings such as the wearing of masks/gloves or the existence of a preapproval letter.

11. QUESTION: Can I reopen my real estate brokerage office?

ANSWER: Yes. Resumed activities under the Governor's Order are not limited to listing appointments and showings but include "work in the real estate industry." Realtors® who have opened or will open their real estate offices soon will need to comply with the workplace standards that apply to all businesses in the state. [[Download Memorandum.](#)]

12. QUESTION: If I open my real estate office, can I invite clients and potential clients to meet me there?
ANSWER: No. The framework of the Governor's Order is that it limits the reasons for which any Michigan resident may leave their home. In the real estate "resumed activities" context, the only permissible reason to leave one's home is "to view a real estate listing by appointment." So, while your office may be open to your agents, it may not be open to members of the public.
13. QUESTION: Can I attend a real estate closing with my clients?
ANSWER: You should first check with the title company as to its policies for conducting closings. A title company is responsible for adopting its own mitigation measures for the protection of its employees and patrons (i.e., buyers and sellers). Assuming that the title company allows you to attend, then you will need to make a determination as to whether you should attend the closing in-person or remotely, keeping in mind the requirement that businesses promote remote work to the fullest extent possible. The level of complexity of a particular transaction may dictate whether attendance in-person at a particular closing is required.
14. QUESTION: My buyers want out of their purchase agreement because of their overall uncertainty about the effect of the coronavirus pandemic. My buyers have decided they don't want to make a large purchase now, even though they can afford it. Given the circumstances, can my buyers unilaterally terminate the purchase agreement?
ANSWER: As a general legal matter, there is no right to unilaterally terminate a contract due to a change in circumstances – even a really significant change in circumstances.
15. QUESTION: The signed purchase agreement states that my buyers will pay cash for the home. They have now produced a document signed by their financial advisor stating that due to market conditions, they no longer have sufficient funds to buy the home. Can my buyers terminate the purchase agreement?
ANSWER: If a purchase agreement calls for a cash purchase, it is not contingent upon the purchasers having available cash. Rather, by agreeing to a cash purchase, the purchasers are representing that they have the available funds. Purchasers are not excused from performing under the contract if, due to market conditions, they no longer have enough money to close. Rather, under these circumstances, the purchasers would be in breach of contract.
16. QUESTION: If I own two residences in different parts of the state, may I travel from one to the other?
ANSWER: Yes. As of April 24, 2020, Michigan residents may travel from one residence to another.
17. QUESTION: Can a seller hire someone to conduct an estate sale?
ANSWER: It is likely that an estate sale would be viewed as a "retail sale." Retail sales are permitted generally in Regions 6 and 8 and "by appointment" elsewhere (limited to 10 customers at any one time).

18. QUESTION: My buyers had an inspection that disclosed that there was window with a broken seal. The buyers are willing to go ahead with the purchase if the sellers will have the window replaced prior to closing. If the sellers are willing to do so, can they have this work done so that the closing can proceed?
- ANSWER: Yes. Like workers in the real estate industry, effective May 7, 2020, work in the construction industry/building trades is permissible resumed activity.
19. QUESTION: Can I hire a photographer to take photographs of my new listing, or am I required to take the photographs myself?
- ANSWER: Yes. Although photographers are not expressly included as a resumed activity, the Governor's Order does cover workers in the real estate industry generally and specifically refers to photography and videography. We would interpret this to mean that photography work is exempt if it is being performed in the context of a real estate transaction – whether done by a licensee or the licensee's employee or independent contractor.
20. QUESTION: May local governments preempt the Governor's Executive Order and be more restrictive?
- ANSWER: Yes. Local health departments and cities and townships may be more restrictive, although none have done so yet. Local health departments have all issued orders that are not more restrictive. They do provide useful details and practical advice for businesses that are open. Those are available through each health department's website. If a city or township were to consider stricter measures, local Realtors® should impress upon their local governments that Realtors® are employing best practices and safety measures.
21. QUESTION: One of my residential tenants has not paid rent for two months. Can I evict them?
- ANSWER: No. On May 14, 2020, Governor Whitmer issued Executive Order 2020-85 that extends the prohibition on residential evictions until June 12, 2020. The only evictions that are permitted are in cases where the tenant poses a substantial risk to another person or an imminent and severe risk to property. The prohibition also protects land contract vendees/buyers.
22. QUESTION: Can a seller/listing agent prohibit children from attending a showing?
- ANSWER: It is the position of both Michigan Realtors® and the National Association of Realtors® that prohibiting children from showings would likely be discriminatory in violation of the Fair Housing Act, since it could discourage families with children, a protected class, from buying the property.
23. QUESTION: Are buyers allowed to attend final walkthroughs under the Governor's Order?
- ANSWER: Yes. The definition of workers in the "real estate industry" specifically mentions final walkthroughs. Also, the Order allows persons to leave their homes to "view a real-estate listing by appointment." This would include a scheduled walkthrough of a listing immediately prior to closing (and any other appointment to view a listed property).
24. QUESTION: Are the rules for real estate services any different in those parts of the state where the Governor has lifted restrictions (e.g., the UP and northwest Michigan). For example, can I show an occupied rental unit in the Upper Peninsula to a potential tenant?

ANSWER: No. The rules for real estate services are uniform throughout Michigan. The different rules for the northern regions only cover restaurants, retail stores, office settings (other than resumed services) and attending social gatherings.

25. QUESTION: Can I show a duplex if one of the units is occupied?

ANSWER: Yes, but only the vacant unit.